

But here there was no possession delivered, nor bond of conveyance or other instrument of writing executed. On the contrary, Mr. Brawner, the husband, retained the possession and use of the property to the day of his death, and was, according to all the manifestations of title known to the law, the absolute and unqualified owner of it. The title now set up as against his creditors, who trusted him upon the faith of this property; rests either upon a secret verbal agreement, or upon the legal doctrine adopted to advance the purposes of justice as between the party who actually pays the money and him to whom the conveyance is made, that a trust results in favor of the former, and will be enforced in equity as against the latter.

But, in a case like the present, and as against subsequent creditors, I am of opinion, no such trust can be raised, or results by legal implication; and with respect to the verbal agreement relied upon in the answer, and already spoken of, it having reference to land, and thus being unlike the case of *Alexander vs. Ghiselin*, would be void by the statute of frauds, as expressly stated by the court in that case.

I, therefore, think no reason has been shown why the tract of land called "Elleslie" should not be liable to be sold to pay the creditors of the deceased Henry Brawner.

This bill was filed on the 12th of November, 1840, and the promise by Mr. Brawner, as proved by Judge Crain, in July or August, 1838, is, in my opinion, a complete answer to the plea of limitations.

With regard to the claim founded upon the promissory note signed by Stewart and the deceased, there being no evidence either that the latter was the principal debtor, or that Stewart is insolvent, I do not think that, according to the Chancery rule, the estate of the deceased can be charged with more than one-half that debt; but, as stated during the argument, the question will be reserved, with liberty to the complainants to introduce proof to obviate the objection.

The statute of frauds is relied upon as a defence against the claim founded upon the open account, and it is insisted that this is an attempt to charge the estate of the deceased with the